IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.471 OF 2005
IN
NOTICE OF MOTION NO.1409 OF 2004
IN
SUIT NO.4603 OF 1995

Transport Corporation of India Limited .. Appellant

v/s.

Larsen & Toubro Limited & anr. .. Respondents

Mr.A.G.Damle i/by Mr.B.J.Singh for the appellant.

Mrs.S.S.Dwivedi i/by Mr.P.N.Sadarangani for the respondents.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 5th July, 2005

P.C.

In the suit filed by the plaintiffs (present respondents), no written statement was filed by the defendants (present appellants). For want of written statement, the learned trial Judge decreed the suit after taking on record the compilation of documents and accepting the averments made in the plaint.

2. The learned counsel for the appellant submits that decree dated 29th September, 2003 is an exparte decree and therefore, an application by way of notice of motion for setting aside the exparte decree was maintainable. We are unable to accept the submission of the learned counsel for the

appellant as from the perusal of the impugned decree, it appears to us that decree was passed by the learned trial Judge for want of written statement. The learned counsel for the appellant does not dispute that the application under Order 9 Rule 13 of the Code of Civil Procedure is not maintainable for setting aside the decree under Order 8 Rule 5 of the Code of Civil Procedure. As already noticed above, the decree appears to be passed under Order 8 Rule 5 of the Code of Civil Procedure and as such the application for setting aside such decree was not maintainable.

3. We find no infirmity in the impugned order. The appeal is dismissed in limine. However, the appellant shall be at liberty to prefer appeal against the impugned decree and if the appeal has become time barred, it is for the appellant to show sufficient cause that prevented them to prefer appeal in time.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)